

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
WARREN C. HAVENS	)	
	)	
Applications to Provide Automated Maritime	)	File Nos. 852997-853009
Telecommunications System Stations at Various	)	
Locations in Texas, and	)	
	)	
Applications to Provide Automated Maritime	)	File Nos. 853010-853014
Telecommunications System Stations at Chaffee,	)	
Aspen, Colorado Springs, Copper Mountain, and	)	
Leadville, Colorado	)	

ORDER ON RECONSIDERATION

Adopted: January 5, 2010

Released: January 14, 2010

By the Commission:

1. *Introduction.* This *Order on Reconsideration* dismisses a repetitious petition for reconsideration. We have before us a petition for reconsideration of the Commission’s *Memorandum Opinion and Order* in this proceeding,<sup>1</sup> filed by Warren C. Havens (“Havens”) and related parties.<sup>2</sup> For the reasons discussed below, we dismiss the petition for reconsideration.<sup>3</sup>

2. *Background.*<sup>4</sup> The above-captioned Automated Maritime Telecommunications System (AMTS) applications filed by Havens were dismissed in 2000 and 2001 because they did not meet the coverage requirements in Section 80.475(a) of the Commission’s Rules, as then in effect.<sup>5</sup> Havens filed

<sup>1</sup> Warren C. Havens, *Memorandum Opinion and Order*, 23 FCC Rcd 3210 (2008) (“*Memorandum Opinion and Order*”).

<sup>2</sup> Petition for Reconsideration of the Memorandum Opinion and Order Based on New Facts (filed Mar. 28, 2008) (“*Petition*”). (On April 2, 2008, Havens filed an Erratum to the *Petition* to correct typographical errors and delete unintended text. Page citations herein are to the Erratum version of the *Petition*.) The related parties are AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC, and Skybridge Spectrum Foundation. Because Havens has standing to file the *Petition*, we need not address the other petitioners’ standing. See *Emmis Communications Corporation, Order on Reconsideration*, 21 FCC Rcd 12219, 12221 n.17 (2006).

<sup>3</sup> On April 9, 2008, Maritime Communications/Land Mobile, LLC (“MC/LM”) filed an opposition to the *Petition*. *Opposition to Petition for Reconsideration of the Memorandum Opinion and Order Based on New Facts* (filed Apr. 9, 2008) (“*Opposition*”). On April 22, 2008, petitioners filed a reply. *Reply to Opposition to Petition for Reconsideration of the Memorandum Opinion and Order Based on New Facts* (filed Apr. 22, 2008). We do not address whether MC/LM has standing to oppose the *Petition*, because we have not relied upon the *Opposition*. See *JNE Investments, Inc., Memorandum Opinion and Order*, 23 FCC Rcd 623, 628 ¶ 13 (2008); *Capitol Radiotelephone, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 7468, 7471 n.25 (2001).

<sup>4</sup> The background is set out more thoroughly in *Memorandum Opinion and Order*, 23 FCC Rcd at 3210-12 ¶¶ 5, and Warren C. Havens, *Order*, 19 FCC Rcd 23196, 23196-99 ¶¶ 2-8 (WTB PSCID 2004) (“*PSCID Order*”).

<sup>5</sup> See Warren C. Havens, *Order*, 15 FCC Rcd 22296 (WTB PSPWD 2000); Warren C. Havens, *Order*, 16 FCC Rcd 2539 (WTB PSPWD 2001). Specifically, applicants proposing to serve a waterway less than 150 miles in length

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petitions for reconsideration that were denied in 2001,<sup>6</sup> a petition for further reconsideration that was denied in 2001,<sup>7</sup> applications for review that were denied in 2002,<sup>8</sup> and appeals to the United States Court of Appeals for the District of Columbia Circuit that remain pending.<sup>9</sup> After the Commission adopted geographic licensing for AMTS and accordingly eliminated the site-based coverage requirements in Section 80.475(a) in the *AMTS Fifth Report and Order*,<sup>10</sup> Havens requested that the dismissed applications be processed pursuant to the new geographic coverage rules and requested forbearance from the site-based coverage requirements. After those requests were denied in 2004,<sup>11</sup> Havens filed a petition for reconsideration that was dismissed in 2005 as untimely filed,<sup>12</sup> a petition for reconsideration that was denied in 2006,<sup>13</sup> and an application for review that was denied in 2008.<sup>14</sup>

3. *Discussion.* Section 1.106(b)(2) of the Commission's Rules provides that a petition for reconsideration of the denial of an application for review will be entertained only if "(i) [t]he petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (ii) [t]he petition relies on facts unknown to the petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity."<sup>15</sup> A petition that fails to introduce relevant new facts or changed circumstances may be dismissed as repetitious.<sup>16</sup>

4. Havens argues that the instant petition for reconsideration is permissible because it relies on relevant new evidence that he could not have learned prior to his last opportunity to present such matters – specifically, the responses to two Freedom of Information Act (FOIA) requests that Havens filed in 2007.<sup>17</sup> In the first FOIA request, Havens sought records pertaining to the engineering that was used to determine whether AMTS applications satisfied the coverage requirements in former Section 80.475(a).<sup>18</sup> In the second request, Havens sought records pertaining to the elimination of the site-based

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had to serve the entire waterway, and applicants proposing to serve a longer waterway had to provide continuity of service along at least sixty percent of it. See 47 C.F.R. § 80.475(a) (1999).

<sup>6</sup> See Warren C. Havens, *Order on Reconsideration*, 16 FCC Rcd 18046 (WTB PSPWD 2001); Warren C. Havens, *Order on Reconsideration*, 16 FCC Rcd 9337 (WTB PSPWD 2001).

<sup>7</sup> See Warren C. Havens, *Order on Further Reconsideration*, 16 FCC Rcd 19240 (WTB 2001).

<sup>8</sup> See Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17588 (2002); Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17527 (2002).

<sup>9</sup> Havens v. FCC, Nos. 02-1315, 02-1316 (D.C. Cir. filed Oct. 16, 2002).

<sup>10</sup> See Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685, 6702-03 ¶ 37 (2002), *recon. granted in part and denied in part*, *Third Memorandum Opinion and Order*, 18 FCC Rcd 24391 (2003) ("*AMTS Fifth Report and Order*").

<sup>11</sup> See *PSCID Order*, 19 FCC Rcd at 23199-201 ¶¶ 9-13.

<sup>12</sup> See Warren C. Havens, *Order on Reconsideration*, 20 FCC Rcd 3995, 3996-97 ¶ 6 (WTB PSCID 2005).

<sup>13</sup> See Warren C. Havens, *Order on Further Reconsideration*, 21 FCC Rcd 3553, 3555 ¶ 5 (WTB 2006).

<sup>14</sup> See *Memorandum Opinion and Order*, 23 FCC Rcd at 3212-13 ¶ 7.

<sup>15</sup> 47 C.F.R. § 1.106(b)(2).

<sup>16</sup> See Emery Telephone, *Memorandum Opinion and Order*, 15 FCC Rcd 7181, 7184 ¶ 5 (1999) (citing 47 C.F.R. § 1.106(b)(3)); see also, e.g., Sagir, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 15967, 16004 ¶ 16 (2003).

<sup>17</sup> See Petition at 2-3.

<sup>18</sup> See *id.*, Ex. 1 Part 1 at 1-2. The request also sought records pertaining to the education and experience of Commission personnel who performed such engineering, computer software and other documents used in the

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coverage requirements in Section 80.475(a).<sup>19</sup>

5. As noted above, a petition for reconsideration of an order denying an application for review must rely on relevant new facts or circumstances. While the exhibits arguably are new, we conclude that they are not relevant.<sup>20</sup> The issue in the *Memorandum Opinion and Order* was whether Havens's petition for reconsideration was properly dismissed in 2005 as untimely filed. The exhibits to the instant petition for reconsideration shed no light on this question. Instead, they relate to the merits of the underlying applications and previous requests.<sup>21</sup> Consequently, we dismiss the instant petition.

6. *Conclusion.* Havens has presented no grounds for reconsideration of our decision denying review of the denial of reconsideration of the dismissal of his untimely petition for reconsideration. We therefore dismiss the instant petition for reconsideration as repetitive.<sup>22</sup>

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 5(c), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by Warren C.

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engineering, and the Commission officials who made recommendations and ultimate decisions regarding whether AMTS applications satisfied the coverage requirements in former Section 80.475(a). In response, Commission staff identified a study pertaining to the interference potential from AMTS systems to television reception and the comments in the rulemaking proceedings pertaining to the coverage requirements, but located no other responsive records. *See id.*, Ex. 1 Part 2 at 2-5.

<sup>19</sup> *See id.*, Ex. 2 Part 1 at 1-2. The request also sought records pertaining to including the Commission employees who made any recommendations or the ultimate decision to eliminate the requirements. In response, Commission staff identified the *AMTS Fifth Report and Order*, the Federal Register summary thereof, and the comments in that rulemaking proceeding, but located no other responsive records. *See id.*, Ex. 2 Part 2 at 2-4.

<sup>20</sup> Similarly, the authority cited by Havens for reopening the administrative record to admit new information, *see* Petition at 10 (citing *Butterfield v. FCC*, 237 F.2d 552 (1956); *Beacon Broadcasting Corporation, Memorandum Opinion and Order*, 11 FCC Rcd 3012 (1996); *Armond J. Rolle, Decision*, 31 F.C.C. 2d 533 (Rev. Bd. 1971)), supports reopening the record only for evidence that is relevant to the proceeding, and thus does not support such action in this instance. Given our resolution of the Petition, we do not reach the question of whether evidence discovered through a FOIA request filed after the petitioner's last opportunity to present such matters should be deemed to have been previously unavailable for purposes of Section 1.106(b).

<sup>21</sup> Nor is Havens's assertion that Commission staff is prejudiced against him and in favor of other AMTS licensees relevant to whether the petition for reconsideration was timely filed. *See* Petition at 3-4, 7. Moreover, these allegations have been addressed elsewhere, and applications for review and petitions for reconsideration of those decisions remain pending. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Second Order on Further Reconsideration*, 24 FCC Rcd 4150, 4153 ¶ 8 (WTB MD 2009) (citing *Northeast Utilities Service Co., Order*, 24 FCC Rcd 3310, 3312 n.22 (WTB MD 2009), *recon. pending*; *Mobex Network Services, LLC, Order on Reconsideration*, 22 FCC Rcd 665, 672 ¶ 15 (WTB MD 2007), *recon. and review pending*, *review pending*).

<sup>22</sup> The above-captioned applications have now been the subject of twelve orders at the Division, Bureau, and Commission level, and are at issue in pending judicial appeals. We plan to give no further consideration to this matter, and the staff is hereby directed to dismiss summarily any subsequent pleadings filed by Havens or related parties with respect to these applications or the authority requested therein. *See* *Central Mobile Radio Phone Service, Inc., Memorandum Opinion and Order*, FCC 86-88, ¶ 3 (rel. Mar. 4, 1986); *Western Communications, Inc. (KORK-TV), Decision*, 59 F.C.C. 2d 1441, 1456 n.21 (1976).

Havens, AMTS Consortium LLC, Intelligent Transportation & Monitoring Wireless LLC, Telesaurus VPC LLC, and Skybridge Spectrum Foundation on March 28, 2008 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary